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SUPREME COURT, U.S.

Supreme Court of the United States

October Term 1947
No. 505

CHARLES KOVACS,
Appellant,

against

ALBERT COOPER, JR., JUDGE OF THE FIRST DISTRICT POLICE COURT OF TRENTON,
Appellee,

ON APPEAL FROM THE NEW JERSEY COURT OF ERRORS AND APPEALS

MOTION TO NOTE JURISDICTION AND TO ADVANCE CONSIDERATION

GEORGE PELLETTIERI
Counsel for Appellant

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MAY IT PLEASE THE COURT:

Now comes George Pellettieri, counsel for appellant, and moves the Court to note jurisdiction in this case and to set it down for argument before the decision is reached in *Saia* v. *New York,* No. 504, October Term, 1947.

Although Section 4 of the Trenton Ordinance drawn in question here, is identical with Section 2 of the Lockport ordinance in *Saia* v. *New York,* there are important differences that require this case to be considered before the case of *Saia* v. *New York* is decided.

The use of the device in this case was in connection with a labor dispute between employer and employee in the City of Trenton, resulting in the National Labor Relations Act augmenting the support given the appellant in this case by the Constitution. *Republic Aviation Corporation* v. *National Labor Relations Board*, and *National Labor Relations Board* v. *Le Tourneau Company of Georgia*, 324 U. S. 793. See also *Thornhill* v. *Alabama*, 310 U. S. 88.

This case is different from the *Saia* case also for the reason that appellant in the courts below and here challenges the validity of the ordinance on the ground that it is vague and indefinite. The use of the terms "unnecessary noise", "physically annoying", "unnatural", "unusual", "annoyance" and "unreasonable", permit the ordinance to be used as a dragnet and provide no ascertainable standard of guilt for the guidance of a court or jury in determining whether the ordinance has been violated, and results in a deprivation of the appellant's rights and liberties, contrary to the due process clause of the Fourteenth Amendment to the United States Constitution.

The ordinance here is condemned in principle by a long line of decisions recently applied in *Winters* v. *New York*, where the Court said:

> "* * * It is settled that a statute so vague and indefinite, in form and as interpreted, as to permit within the scope of its language the punishment of incidents fairly within the protection of the guarantee of free speech is void, on its face, as contrary to the Fourteenth Amendment. *Stromberg* v. *California*, 283 U. S. 359, 369; *Herndon* v. *Lowry*, 301 U. S. 242, 258 * * *

"On its face, the subsection here involved violates the rule of the *Stromberg* and *Herndon* cases, *supra*, that statutes which include prohibitions of acts fairly within the protection of a free press are void * * *

"* * * Again in *State* v. *Klapprott*, 127 N. J. L. 395, a statute was held invaild on an attack against its constitutionality under state and federal constitutional provisions that protect an individual's freedom of expression. The statute reads as follows, p. 396:

> 'Any person who shall, in the presence of two or more persons, in any language, make or utter any speech, statement or declaration, which in any way incites, counsels, promotes, or advocates hatred, abuse, violence or hostility against any group or groups of persons residing or being in this state by reason of race, color, religion or manner of worship, shall be guilty of a misdemeanor.'

The court said, pp. 401-2:

'It is our view that the statute, *supra*, by punitive sanction, tends to restrict what one may say lest by one's utterances there be incited or advocated hatred, hostility or violence against a group "by reason of race, color, religion or manner of worship." But additionally and looking now to strict statutory construction, is the statute definite, clear and precise so as to be free from the constitutional infirmity of the vague and indefinite? That the terms "hatred," "abuse," "hostility," are abstract and indefinite admits of no contradiction. When do they arise? Is it to be left to a jury to conclude beyond reasonable doubt when the emotion of hatred or hostility is aroused in the mind of the listener as a result of what a speaker has said? Nothing in our criminal law can be invoked to justify so wide a discretion. The criminal code must be definite and informative so that there may be no doubt in the mind of the citizenry that the interdicted act or conduct is illicit.'"

(*Winters* v. *New York*, No. 3, October Term, 1947; decided March 29, 1948. See slip opinion, pp. 2-3, 5, 10. 16 Law Week 4279, 4280, 4282). See also the discussion and cases cited under Ground Six of the Jurisdictional Statement filed in this case. This case is not governed by *Chaplinsky* v. *New Hampshire*, 315 U. S. 568.

In view of these differences and the relation between this case and the case of *Saia* v. *New York*, No. 504, October Term, 1947, these cases were docketed together with the view that jurisdiction would be granted in both and that both cases would be considered and heard consecutively.

The noting of jurisdiction in the *Saia* case and failing to note jurisdiction in this case will result in injury to the appellant if precedent is established by a decision adverse to Saia in his case. This case will be affected thereby and appellant will not have had his day in court by giving his counsel an opportunity to orally discuss the differences and the issues here mentioned.

WHEREFORE appellant prays that the Court forthwith note jurisdiction in this case and set it down for oral argument at an early date and, if possible, before the decision in *Saia* v. *New York*, No. 504, October Term, 1947, is reached. Appellant prays for such other and further relief to which he may show himself justly entitled.

Respectfully submitted,

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